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See Julio vs. Ingall, 1 Allen, 41. In Hazard vs. Hazard, 1 Story, 372, it was agreed that B. H.

Hazard, 1 Story, 372, it was agreed that B. H.

devote his whole time, excepting his attendance his part. Story's Part., \$173, and note: Coll. do-

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George E. Tucker and Gilbert Waller, vs. Gerritt P. Judd. Executor, and J. W. Austin. Administrator, with the Will annuxed, of Theophilu Metculf, deceased.

The papers present some complication, but sons were given in support of this doctrine that assume the consequences and thence infer the a partnership could thus be created merely by cause. FROM THE PIONEER MILLS, Lahaina. operation of law. It was said that taking profits Did the parties in this case intend to act to-"as rofits," and not as wages, indicated a part- gether as principals in a common business? We nership between the parties as far as they were think such was their intention. It was agreed themselves concerned, as well of course as far as that the plantation should pay for losses by injury FROM THE WAINEE PLANTATION. others were entitled to regard them. As the decrease of the partnership fund by liens for profits for them. The plantation, with all its improve is the loss of private creditors, it was argued ments, as agreed, "shall revert to said T. Metthat any person having such a lien must be a calf or his heir." This indicates that during the FROM THE HEELA PLANTATION. Crop partner. But this is assuming what should be term of the partnership, the use of the land is in proved, by a species of petitio principii, or beg- the partners alone. We also have the incidents ging the question." If there is no partnership. of a community of interest, a division of profits, creditors care nothing whether their debtor has a control of the plantation by Tucker and Walpaid his agent with money "as profits," or "as | ler, and of mutual and common accounts, which wages." If the debtor undertakes illegally to tend to confirm the conclusion that a partnership prefer claims, they may be contested, but it is was meant. hard to see why a prior agreement that the agent's What are the incidents of this partnership. claim shall be preferred, must of necessity create and what are the mutual rights, duties and oblia partnership and impose a liability never intend- gations of the partners? First, the partnership cd. Courts often objected to this doctrine. Lord itself was dissolved at Metcalf's death. The Eldon was reluctant to accept so "thin" a distinction as a conclusive test. Judge Story regretted binding upon the heirs and creditors of Metcalf. while he admitted its necessity, C. J. Gibson, of because there was no stipulation to that effect, the Supreme Court of Peresylvania was desirous and such express stipulation is always necessary, of throwing off the authority of Waugh vs. Car- in articles of co-partnership for a term of years, ver as having been made subsequently to the in order to prevent a dissolution at the death of American Revoultion, but was unable to take the either partner. Sometimes a direction in the

Except in a few instances, as in the Supreme Court of New Humpshire, (see Bromley vs. Elliot, devisees of the testator; but in this case, the 38 N. H., 287.) the doctrine referred to was regarded as law, until recently, when its authority tent, in view of his previous declarations, appearhas been successfully attacked and overthrown. ing in his letters, which are in evidence, that question, except so far as it is evidence of the repress stipulation. Burwell vs. Mandeville's Ex. purchasers by
C. BREWER & CO., Agents. taking the profits and those actually carrying on Story's Part. ≥84, 85,196. The accounts of the NEW CROP NOW COMING IN. FOR SALE man. 8, House of Lord's cases 268; Kilshaw vs. This view affects the mutual rights and duties of

Reports, 1 C. P., 86. The reasoning of the Court in the recent English cases has special significance. In Bullen vs. ONE CAST IRON Vacuum Pan, 5 feet, Sharp, Mr. Justice Blackburne referring to the vs. Hickman, the creditors of a trade had agreed that their debtor's trade should be carried on for

To open a partnership account after the death of interested in the profits, therefore they would be allowed which they failed to make seasonably, during partners. But this a fallacy. This no doubt, is Matcalf's life.

Rep. (1865) 107. White Castile Seap.

White Castile Seap.

Pain Killer, &c. &c.

Gray, 59 a firm had leased a hotel of the Corpo-

> Howland, 5 Denio, 68. Agreement that A have worked for their own as well as the co 14 Peck, 192; and see Dennis vs. Cabot, 6 Met. vs. Kimberly, 3 Johns., Ch. 431. books to sell for a share in the profits. Newman vs. Bean, I Fost, 95. Agreement that a ship-owner victual and man the ship and new half man. owner victual and man the ship and pay half port charges, the master paying the other half, and site to take off the crop of 1864, and for their loss rigging the ship, the profits on freights to be equally divided. Cutler vs. Winsor, 6 Pick. equally divided. Cutter vs. Winsor, 5 Pick., 337; Reynolds vs. Toppen, 15, Mass., 370. But urnish, sessonably, the required machinery. He

on religious meetings, exclusively to the management of the factories of T. R. H., taking the machinery as it is, and returning it in like order," for one fourth of the profits. See Champion vs. Bostwick, 18 Wend., 175; Borckie vs.

\$6.00 PER YEAR

Eckhart, 3 Coms., 132; Conklin vs. Barton, 43 Bar., 438; Gratz vs. Bayard, 11 S. & R., 41. Examination of the authorities cited, and of there are few unsettled points of law involved in the cases referred to by them, will show that a the case, which require the judgment of the Court. partnership can not be inferred merely from a The first point is whether Tucker and Waller were | common interest," from a sharing in profits, Metcalf's partners, or his agents only, to be re- from the right to account, nor from a direct conmunerated by shares in the profits. There has trol over the business. How, in fact, can an been a series of decisions in the English and agent prove a disputed claim for agreed profits, FROM THE EAST MAUI PLANTATION. United States Courts, commencing with the lead-unless he can have an account? (Gray's Notes ing case of Waugh vs. Carver, 2 H. Bl. 235, in on Story's Part., p. 89.) All these relations be-1789, to the effect that parties might become lia- tween parties are not inconsistent with those of ble for each others acts as partners, contrary to principal and agent, and are, therefore, insufficient their own intention or expressed agreement. If of themselves to establish a partnership a priori, A and B agreed that B carry on a work for A. but in order to decide the matter, we must look for a share of profits. B was held liable for the to the agreed intention of the parties, as shown debts contracted for that work, notwithstanding by their words and acts, prior to any dispute he may have expressly stipulated that he should arising. The legal consequences of a partnership FROM THE HOBRON PLANTATION. not be liable as a partner, provided the creditor exist without agreement, and often contrary to was not aware of such stipulations. Various rea- the expectation of parties, but it is illegical to

responsibility. Miller vs. Bartlet, 15 S. & R., 157; will of the deceased partner is regarded as an Hazard vs Hazard, 1 Story, 371; Story's Part., expression of his assent to such an agreement, leaving it optional with the surviving partners to continue the business with the representatives or

"A series of cases has decided that the law of he never regarded the complainants as partners. partnership is a branch of the law of agency; The Roman law prohibited the continuance of that the test to determine the liability of one a partnership, even by previous agreement, after sought to be charged as a partner, is whether the the death of any partner. The English law never ticipation in the profits is not decisive of that continuance of the partnership, but only by exlation of principal and agent between the person 2 H., 573; Scholefield vs. Eichburger, 7, P., 594; the business." Gray's notes on Story's Part. 349. partnership must be made up to the time of its Juker, 3 B. & S., 847; Bullen vs. Sharp. Law the executors and complainants, inasmuch as they are to be regarded, not as partners, but as trus-

The terms of the partnership are clear: The combinants are "to take charge and carry on," Metrule in Waugh, vs. Carver, says: "This decision calf to furnish land, with the improvements and anhad never been overruled-when more recent- imais then upon the land, and all capital or means ly it was a common opinion, (in which I for one | required "for the sufficient conduct of the plantaparticipated) that the doctrine had become so in. I thun," the partnership paying for losses by injury to veterately part of the law of England, that it mimals, the cost of their keeping, and interest on would require legislation to reverse it. In Cox the money furnished; the plantation and improve-

the purpose of paying them their debts out of the one of the partners, requires a clear case of fraud or profits; and the composition deed, to which they gross error, and allowances are not usually made were parties, secured to them a property in the for any contribution to the common stock. Foster profits. The role laid down in Waugh vs. Carves. Hodgson, 19 Ves., 180; Dexter vs. Arnold, 3 ver. if lorically carried out. led to the conclusion, 284; Winsor vs. Savage, 9 Metcall, 347; ver, if logically carried out, led to the conclustory's Part., \$193, note 3, \$233, note 4, and \$349. sion that all the creditors who assented to this In regard to the claim of \$1,989, claimed by the deed, and by so doing agreed to take the profits. complainants for their implements, for the payment were individually liable as partners; but when it of which by note they show Metealf's receipt, it was sought to apply the role to such an extreme appears that Metcalf agreed to furnish the imple case, it was questioned whether the rule itself ments then on the place, and that the complainants vas really established. In the result, the House not having agreed so to do, furnished those meaof Lords, consisting of Lord Campbell, C., and Lords Brougham, Cranworth, Wensleydale and Chalmsford, proprinted that the said which they can identify, but if they have rolan Chelmsford-unanimously decided that the creditors were not partners. Lord Cranworth they should be paid for their use, they can not, at says: "It was argued that as they would be this late day, have the accounts opened, and a claim

general a sufficiently accurate test." I think suimals on the piece which be agreed to furnishthat the ratio decidends is, that the proposition | There is no evidence that the complainants furnished laid down in Wangh vs. Carver, viz. that a parti- money to carry on the plantation, or that Meteni cipation in the profits of a business does of itself. failed to formels capital as agreed. It was not in by operation of law constitute a partnership, is tended that the complainants should share in the not a correct statement of the law of England; gross profits, but only in the net profits. If the BROWN'S TROCHES, HAMBURG TEA. the test being in the language of Lord Wensley-dule, whether it is such a participation of profits

A Great Assortment of Esse tial Oils. dale, whether it is such a participation of profits tual assent, and if no gain resulted therefrom, no as to constitute the relation of principal and one can be blamed, unless for violation of good agent between the person taking the profits and faith, or by failure to exercise the diligence and those actually carrying on the business." I Law produce that a reasonable man could require. The complainants made no objections, called for no di-In Holmes vs. Old Colony R. R. Corp., 5 vision of profits, but continued in the business as it ration for \$500 and "one half net proceeds," but the net profits of which they were interested. If it was held that no partnership existed, the Court. the result was unsatisfactory, it is too late to claim Dewey, J., saying that it is no longer true that reimbursement for their ventures, and too late to receiving profits, or not profits, must produce that compel, on the part of their decessed partner, a result, but that all the circumstances must be specific performance of any part of the agreement, which, in good faith, and exercising reasonable care,

In the following cases it was held that there

By the law of Partnership, relither party is cutified.

By the law of Partnership, relither party is cutified. was no partnership: Case of a ferry which A to payment for personal services, unless by express leased to B, the latter to pay expenses, and have agreement. This disposes of the mutual claims for one half the gross earnings. Heimstreet vs. services in this case. The partners are presumed to farnish B with wool to make into satinets for A. lin vs. Robinson, 1 Johns., Ch. 158; Story's Part. for forty per cent. on sules. Turner vs. Bissell. \$182; Caldwell vs. Lieber, 7 Paige, 483; Beadford.

82; Bradley vs. White, 10 Met., 308; Pratt vs. No allowance can be made for the "Hema" lot, Langhon, 12 Allen, 544; Hir as vs. Ellis, 12 bought by Metcalf at his own instance, nor for his Gray, 449. Agreement that A furnish B with payments of Wyllie's note of \$2,000, or Bates's

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\$178; Lyles vs. Styles, 2 Wash, C. C., 224. It is, however, a clear principle of law, that part-crahip property shall be devoted to partnership purposes. The partnership must be allowed for all sums paid for Metcalf's private debts, or for the use of his family, from proceeds of sugar. No deficiencles in the Executors' accounts are shown, and in the argument, the charges concerning the wood, shooks, &c., also concerning unreasonable delay to account, are withdrawn. The sums admitted as

fund, and can not be regarded as chargeable to the plantation. Story's Part., \$ 856. If debts incurred by Metcalf for the purpose of urnishing means, as agreed, to carry on the plantation, were paid out of the proceeds of sugar, the sums so paid are to be allowed to the firm, but no allowance is to be made for payments of interest. The evidence falls to satisfy us that interest was paid against the complainants' protest, or that higher rates were paid than were required to raise

paid on private account are, \$11,795, \$2,118.66,

\$3,250, and \$2,821. These are to be allowed the

The partners argued that all "improver should revert to the plantation; without this clause, all improvements and all articles paid for by Met have belonged to his estate. But it seems that the firm invested to some extent the proceeds of the augar. The question arises, whether the improvents paid for by the undivided profits are to be egarded as firm property, or as reverting, under the original agreement; and if they revert, as to the aning of the term improvements. We are of the sion that the partners enlarged the business by investing proceeds of sugar sales, in addition to the means furnished by Metcalf, under the original agree-

ment concerning the reverting of improvements The term improvements, according to Bouvier, applies principally to buildings, "though generally it extends to amelioration of every description of

property, whether real or personal. The old rule concerning fixtures and standing crops, is greatly cularged in favor of tenants, for ler vs. Plumb, 6 Cow., 665. In Lawton vs. Lawton, 3 Atk., 13, a fire-engine, erected by a tenant for a olliery, was held not to be a fixture. So with malinery creeted for manufacturing purposes, on timbers imbedded in the soll, or fastened thereto with bolts. House vs House, 10 Palge, 158. Also, looms in a woolen mill. Murduck vs. Gifford, 15 N. Y., 28. And machinery in a cotton mill, removable without any injury to itself or the building. derpoel vs. Van Allen, 10 Bar. 161. But such a rule would not hold between vender and purchaser, or mortgager and mortgagee. Winslow vs. Merchauta

Ins. Co., 4 Met., 306. In the present case, the proper rule is that which prevails between landlord and tenant, as to im ovements purchased by common funds, and as to the crop remaining at the date of the winding up of the partnership, which was not until the expiration

of the original ten years from December 14, 1857. We are of the opinion that all stock, tools, and engines removable without injury to the buildings, and bought with partnership funds, and the crop standing December 14, 1867, are to be regarded as

As for the sums paid for labor contracts, if paid from money derived from the business, they must be regarded as paid by common consent, and as deemed essary to obtain the labor. An apportionment of sums so paid, between the firm and the estate could only be made under an agreement to that effect. In Mercalt's letter to Waller, of July 29th, trade is carried on in his behulf; and that pur- went to that length, but has always allowed the 1865, after writing that he has fifty coolies from the Materior, at \$150 each for their contracts, " which A., W. & Co. will send you," he adds: "As their dition, in order to realize as much as possible on The decisions last referred to are Cox vs. Hick- dissolution, allowing time to wind up the concern. day per Golden West, realized \$150 each for their contracts for five years, at \$5 per month." think this shows the intention of the partners, that for the term of labor remaining to the estate, an ailowance should be made the firm, deducting, of course, loss by death or disease, and such allowance

may be made in regard to the coulies; but no such agreement about the native laborers was made. The statutes do not require-and it does not appear-that the Court ordered any appraisement by the Executors. As for the mortgage and notes given by the Executor, to cover liabilities incurred by Metcalf, -whatever may have been the legal right of the Executor to give them, as against belrs and credit ors,-it does not appear that the firm were injured the principal, and for the interest thereon, the firm was liable. No allowance can be made for any supposed profit that might have secrued from a different urse, as there seems to have been no bad faith

we in the course pursued. It will be remembered that, although the complainants have a good claim against the estate for sums paid from proceeds of the business for Metcalf's private account, yet the firm were liable for

sums advanced for the plantation. An order of reference to a Master may be taken out, directing an appraisement of the net value of the crop standing Dec. 14th, 1867, and of the implements and machinery as already stated, and of all sums allowed to the fund, and of the respective shares therein of the complainants, of one-fifth each; and upon the coming in of the Mas port, decree will be made, accordingly, in favor of the complainants.

R. H. Stanley and S. H. Phillips for complainents. C. C. Harris, J. Montgomery, H. Thompson and A. F. Judd for respondents.

HEAVY FAILURE OF A JEWPLET FIRE,—A short time since the firm of Isaac S. Jesephi & Co., importing jewelers, whose establishment was located as No. 541 Washington street, falled, their liabilities amounting to some \$230,000. The firm was forced into involuntary bankingtopy by the deciditors, in the list of which are the Parrott, Latham, Denohoe and other banking establishments and the matter was referred to Mr. Bates, Register in Bankruptey. When the affairs of the firm were investigated, several iransactions of a questionable character were brought to light, and the attorney for the creditors secred the Jensphi Brothers for their alleged perfety. It was observed at the time thatthehead of the home, Isaac S. Jesephi, winced under the charges made, and the attempt to refute them. Vesterday moraing it transpired that he had bundled up his movable property and incominently left this Decality on Saturday last for regions unknown. It is stated by parties who profess to have definite knowledge in the matter, that Isaac was a passenger on the steamer which left this city for Panama.

all probability the runar have seen spirites any least, that is the opinion prevailing in commercial circles—and solers the defaulter is captured, there will be no issue or cash to offer up as a sacrifice in the bankruptcy proceedings. Wasther any attempt will be made to check Mr. Josephi in his career is not at present known.—S. F. Bullities.

CHINESE Laborene Golpo to Texas.—J. B. Dorsey of this city shipped on Saturday last, by way of the Central Pacific Railroad, 300 Chinese laborers do contract to go to Texas and work on the Texas Railroad. These men were all gathered up in San Francisco and the adjoining towns, and are the first lot of men who have ever left here as laborers desticed to a remote part of the Union. They fully understood the contract, not were glad of the opportunity to secure steady employment. A special multiplication of Company. The mon are expected to reach Gaireston in 18 days from the time of having fan Francisco, going by way of St. Louis and New Orleans. If the men give satisfaction as laborers, other and larger shipments will be made at an early day.—Bulletin, Dec. 25.